the mere fact of his existence. It is true the courts have laid down an arbitrary rule that a gratuitous bailee is liable only for gross negligence,[8] but by means of various subordinate rules of interpretation they have nearly reconciled this with the natural and as it seems more sound principle that the bailee should be required to exercise that degree of care which would seem reasonable from the character of the thing undertaken.[9] But whatever rule is applied to determine the extent of liability, the liability itself must arise from the act of the defendant in assuming such a relation.

The utility of the doctrine of undertakings is well illustrated by the case of *Shiells* v. *Blackburne*.[10] A customs officer who gratuitously undertook to enter some goods at the custom house, was held liable for performing it negligently. So, in a recent Canadian case the defendant, an insurance agent, agreed, without compensation, to place some additional insurance for the plaintiff, and notify the other companies of the increase. Through his neglect of this notification the plaintiff when the premises were burned was forced to settle at a loss. The court held that the defendant was liable for the loss. *Barber* v. *Jones*, 2 Can. L. Rev. 658 (September, 1903). In both these cases the duty violated arises from the relation assumed by the defendant, and his liability exists only because of his undertaking.

INSURANCE IN BENEFIT SOCIETIES. — Insurance on the co-operative or assessment plan has become the chief, instead of a subsidiary purpose of the Mutual Benefit Society. The courts accordingly treat such a society as merely another form of insurance company.[1] Alike in purpose, the two differ chiefly in this, that while the contract of the insured with the ordinary company is contained in the policy alone, only part of the contract of the member with the society is in the certificate of membership. The by-laws in force at the time are part of the contract, whether mentioned in the certificate or not.[2] Practically all such by-laws contain provisions for their amendment. In a recent Kansas case the plaintiff's dues were fixed by the by-laws of a mutual benefit association. An amendment materially increasing his monthly payment without his consent was held void as to him. *Miller* v. *Tuttle*, 73 Pac. Rep. 88. The case involves the question how far the society may amend its by-laws so as to increase the burdens or lessen the benefits of a member.

To make the question depend on the "reasonableness" of the amendment, as some courts have done,[3] is unsatisfactory. The rights of the member should be determined by deciding, from a fair construction of the contract, to what he agreed. To set up an arbitrary standard of reasonableness helps but little to the solution of the question. What effect, then, has the provision for amendment of the by-laws on the contract? As to this there is apparently a hopeless conflict. Some cases[4] seem to hold that the mem-

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[8] Coggs *v.* Bernard, 2 Ld. Raym. 909.

[9] For a full discussion of this point, see 5 HARV. L. REV. 222. Preston *v.* Prather, 137 U. S. 604; Shiells *v.* Blackburne, 1 H. Bl. 158; Gill *v.* Middleton, 105 Mass. 477; Siegrist *v.* Arnot, 10 Mo. App. 197.

[10] *Supra.*

[1] See cases collected in Niblack, Acc. Ins. & Ben. Soc. § 3, n.

[2] *Idem*, § 136, and cases cited.

[3] Weiler *v.* Eq. Aid Union, 92 Hun (N. Y.) 277.

[4] Cases collected in Morton *v.* Supreme Council, 73 S. W. 259.

ber agrees to any amendments the society may make concerning its government or the transaction of its business, but not to amendments materially lessening the value of his insurance. This view fails to recognize that the member must realize that he is entering a mutual association, and that a partial sacrifice of his individual rights may often be necessary to preserve to him the benefit of its continued existence. On this reasoning other cases[5] seem to hold that the member agrees to any amendments the society sees fit to adopt. This is error at the other extreme. Prospective benefits for which he has given valuable consideration should not be wholly at the mercy of the majority. On the whole, neglecting language broader than the decisions require, it is believed that nearly all the cases may be reconciled as establishing the following middle view: That the member agrees to changes in the original contract except in so far as they alter amounts expressly named in the certificate. This construction seems best to accord with justice and the probable intention of the parties. The ordinary man would suppose himself secure in rights to definite sums specified on the face of the certificate, while regarding the right to benefits provided by the by-laws as a right to receive them subject to such changes as the good of the society as a whole demands. And the society in contracting would hardly demand greater latitude than this in adapting its rules to changes in its financial condition.

THE NATURE OF A PARENT'S RIGHT IN HIS CHILD. — The primitive conception of the family relation made the child the property of its father. The Roman law even placed its life at his disposal on the theory that he who gave life should have the power to take it.[1] The common law was more humane. But although the child was given separate property rights, and unnecessary acts of cruelty on the part of the father were illegal,[2] yet the duty of maintenance was established only by statute,[3] and within the last century the father had in England an absolute right to the custody of the child, which was not affected by the child's interests, nor forfeited by the father's misconduct.[4] Modern ideas are in sharp contrast with this ancient conception. In deciding custody cases, the courts have repeatedly stated that the only consideration is the interest of the child.[5] Text-writers have gone still further and advanced a theory of the parental relation which makes the parent's duties — to maintain, protect, and educate — fundamental. His rights to the service and custody of the child, to correct it and determine its education and religious training, are, on the other hand, regarded as merely incidental to his obligations, bestowed because necessary to their performance.[6]

There are, however, decisions whose correctness can hardly be questioned, which cannot be accounted for under this theory. Thus courts are frequently called upon to decide whether a child shall be intrusted to a poor and ignorant parent or to more prosperous relatives. If the interests of the child were, in truth, the only consideration, and the parent's rights merely

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[5] Collected in Pain *v.* Doc. St. Jean Baptême, 172 Mass. 319.

[1] Cod. 8, 47, 10; 1 Bl. Com. 452.

[2] 1 Bl. Com. 453; Johnson *v.* State, 2 Humph. 283.

[3] 43 Eliz. c. 2.

[4] See Talfourd's act, 2 & 3 Vict. c. 54; Rex *v.* De Mandeville, 5 East, 221.

[5] People *v.* Mercein, 3 Hill (N. Y.) 399.

[6] Schouler Domestic Relations, 5th ed., 383.